

05-588 NOV - 4 2005

No. \_\_\_\_\_ OFFICE OF THE CLERK

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In The  
Supreme Court of the United States

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SEVEN UP PETE VENTURE, an Arizona General  
Partnership, d/b/a SEVEN UP PETE JOINT VENTURE,  
CANYON RESOURCES CORPORATION, a Delaware  
Corporation, JEAN MUIR, DR. IRENE HUNTER, DAVID  
MUIR, ALICE CANFIELD, TONY PALAORO, JUNE E.  
ROTHE-BARNESON, AMAZON MINING COMPANY, a  
Montana Partnership, PAUL ANTONIOLI, STEPHEN  
ANTONIOLI, and JAMES E. HOSKINS,  
*Petitioners,*

v.

THE STATE OF MONTANA,  
*Respondent,*

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On Petition for Writ of Certiorari  
to the Montana Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether real property interests and State Mineral Leases, which carried with them an opportunity to seek a mining permit, are "property" protected under the Takings Clause.

2. Whether the heightened constitutional scrutiny required under the Contracts Clause where a State law impairs a State's own contracts may be avoided if the State denies that the impairment was in its financial self-interest.

## **PARTIES TO THE PROCEEDING**

Petitioners and Respondent are identified in the case caption. Additionally, parties that intervened in the state court proceedings as defendants and respondents were the: Montana Environmental Information Center, Montanans for Common Sense Mining Laws-for-I-137, Big Blackfoot Chapter of Trout Unlimited, and Mineral Policy Center.

## **RULE 29.6 STATEMENT**

Petitioner Seven Up Pete Venture ("Venture") is an Arizona general partnership owned by Canyon Resources Corp. ("Canyon") and CR Montana Corp. Canyon owns a 36.125 percent interest and CR Montana Corp. owns a 63.875 percent interest in the Venture. Canyon is a publicly-traded corporation and CR Montana Corp. is Canyon's wholly-owned subsidiary.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDING .....	ii
RULE 29.6 STATEMENT .....	ii
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL PROVISIONS INVOLVED .....	1
STATEMENT .....	1
REASONS FOR GRANTING THE PETITION .....	6
I.     THIS COURT SHOULD DECIDE WHETHER REALTY AND LEASES, WHICH PROVIDED AN OPPORTUNITY FOR MINING PERMITS, ARE “PROPERTY” PROTECTED FROM UNCOMPENSATED TAKINGS .....	7
A.     The Montana Supreme Court’s Holding Conflicts With This Court’s Decisions On An Important Federal Question Involving The Constitutional Protection Of “Property”. .....	7

B.	The Montana Supreme Court Incorrectly Cited Case Law Revealing Conflicts Among Federal Circuits Regarding When The Focus Should Be Upon The Underlying Property As Opposed To Simply A Requested Permit.....	11
C.	The Need For This Court's Review Is Heightened By The Decision Last Term In <i>San Remo</i> .....	14
II.	THIS COURT SHOULD DECIDE WHETHER HEIGHTENED SCRUTINY APPLIES TO ALL IMPAIRMENTS BY A STATE OF ITS OWN CONTRACTS.....	15
	CONCLUSION .....	20

## TABLE OF AUTHORITIES

### Cases

<u>Armstrong v. United States</u> , 364 U.S. 40 (1960) .....	17
<u>ASARCO Inc. v. Kadish</u> , 490 U.S. 605 (1989) .....	10
<u>Bank of America v. 203 North LaSalle Street Partnership</u> , 526 U.S. 434 (1999) .....	9
<u>Bituminous Materials, Inc. v. Rice County</u> , 126 F.3d 1068 (8 <sup>th</sup> Cir. 1997) .....	12
<u>Cohen v. Cowles Media Co.</u> , 501 U.S. 663 (1991) .....	6
<u>DeBlasio v. Zoning Bd.</u> , 53 F.3d 592 (3d Cir. 1995) .....	12
<u>Energy Reserves Group, Inc. v. Kansas Power and Light Co.</u> , 459 U.S. 400 (1983) .....	15, 16
<u>Exxon Corp. v. Eagerton</u> , 462 U.S. 176 (1983) .....	15
<u>First English Evangelical Lutheran Church v. County of Los Angeles</u> , 482 U.S. 314 (1987) .....	6
<u>Gardner v. City of Baltimore</u> , 969 F.2d 63 (4 <sup>th</sup> Cir. 1992) .....	12, 13
<u>George Washington Univ. v. District of Columbia</u> , 318 F.3d 203 (D.C. Cir. 2003) .....	11, 12
<u>Hodel v. Virginia Surface Mining &amp; Reclamation Association, Inc.</u> , 452 U.S. 264 (1981) .....	8
<u>Jacobs, Visconsi &amp; Jacobs Co. v. City of Lawrence</u> , 927 F.2d 1111 (10 <sup>th</sup> Cir. 1991) .....	12
<u>Kaiser Aetna v. United States</u> , 444 U.S. 164 (1979) .....	9

<u>Keystone Bituminous Coal Ass'n v. DeBenedictis</u> , 480 U.S. 470 (1987).....	8
<u>Kiely Constr. LLC v. City of Red Lodge</u> , 312 Mont. 52, 57 P.3d 836 (2002).....	5, 11, 13
<u>Lingle v. Chevron U.S.A. Inc.</u> , 125 S. Ct. 2074 (2005).....	9
<u>Linton v. Commissioner</u> , 65 F.3d 508 (6 <sup>th</sup> Cir. 1995).....	18
<u>Logan v. Zimmerman Brush Co.</u> , 455 U.S. 422 (1982).....	9
<u>Lucas v. South Carolina Coastal Council</u> , 505 U.S. 1003 (1992) .....	7, 9
<u>Lynch v. United States</u> , 292 U.S. 571 (1943) .....	17
<u>Manhattan Life Ins. Co. v. Cohen</u> , 234 U.S. 123 (1914).....	6
<u>Mercado-Boneta v. Administracion Del Fondo De Compensacion</u> , 125 F.3d 9 (1 <sup>st</sup> Cir. 1997) .....	18
<u>Montana Ry. Co. v. Warren</u> , 137 U.S. 348 (1890).....	10
<u>National R.R. Passenger Corp. v. Atchison, Topeka and Santa Fe Ry. Co.</u> , 470 U.S. 451 (1985) .....	17
<u>New York v. Class</u> , 475 U.S. 106 (1986) .....	6
<u>Palazzolo v. Rhode Island</u> , 533 U.S. 606 (2001) .....	7, 10
<u>Pennsylvania Coal Co. v. Mahon</u> , 260 U.S. 393 (1922).....	9
<u>Phillips v. Washington Legal Found.</u> , 524 U.S. 156 (1998).....	7

<u>RRI Real Estate Corp. v. Village of Southampton</u> , 870 F.2d 911 (2d Cir. 1989).....	12
<u>San Remo Hotel v. City and County of San Francisco</u> , 125 S. Ct. 2491 (2005).....	7, 14
<u>Spence v. Zimmerman</u> , 873 F.2d 256 (11 <sup>th</sup> Cir. 1989).....	12
<u>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</u> , 535 U.S. 302 (2002).....	8
<u>Town of Castle Rock v. Gonzales</u> , 125 S. Ct. 2796 (2005).....	7, 8
<u>United Nuclear Corp. v. United States</u> , 912 F.2d 1432 (Fed. Cir. 1990).....	12-13
<u>United States Trust Co. v. New Jersey</u> , 431 U.S. 1 (1977).....	<i>Passim</i>
<u>United States v. Riverside Bayview Homes, Inc.</u> , 474 U.S. 121 (1985).....	8
<u>United States v. Winstar Corp.</u> , 518 U.S. 839 (1996).....	15, 17, 18
<u>Webb's Fabulous Pharmacies, Inc. v. Beckwith</u> , 449 U.S. 155 (1980).....	7



**Constitutional and Statutory Provisions**

U.S. Const. Art. I, § 10 .....	1, 6
U.S. Const. amend. V .....	1, 6, 7, 8
U.S. Const. amend. XIV .....	1, 6, 7
28 U.S.C. § 1257(a).....	1
Mont. Code Ann. § 82-4-390.....	3

**Other Authorities**

Jan G. Laitos, <i>Law of Property Rights Protection</i> (2005).....	10, 19
Laurence H. Tribe, <i>American Constitutional Law</i> (2d ed. 1988).....	17
Note, <i>Rediscovering the Contract Clause</i> , 97 Harv. L. Rev. 1414 (1984) .....	18
Note, <i>Takings Law and The Contract Clause: A</i> <i>Takings Law Approach to Legislative</i> <i>Modifications of Public Contracts</i> , 36 Stan. L. Rev. 1447 (1984) .....	18
Parna A. Mehrbani, <i>Substantive Due Process Claims</i> <i>in the Land Use Context</i> , 35 Env'tl. L. 209 (2005).....	13

## **OPINIONS BELOW**

The Montana Supreme Court decision (Pet. App. 1a-39a) is reported at 114 P.3d 1009. The decisions of the state district court (Pet. App. 40a-65a and 66a-88a) are unreported.

## **JURISDICTION**

The Montana Supreme Court decided this case on June 8, 2005. On August 8, 2005, Justice O'Connor granted Application No. 05A133 and extended the time for filing a certiorari petition to and including November 4, 2005. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fifth Amendment, incorporated and made binding upon States by the Fourteenth Amendment, provides in pertinent part: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

The Contracts Clause provides that "No State shall ... pass any ... Law impairing the Obligation of Contracts...." U.S. Const. Art. I, § 10.

## **STATEMENT**

This case arises from an unforeseeable initiative that established a "first in the nation, statewide ban of the one mining method admittedly contemplated by" Petitioners and the State when they signed mining leases. Pet. App. 25a ¶ 44. Petitioners "invested more than \$70 million and expected to reap millions in return" from these leases that (along with other properties owned by Petitioners) are "now worthless" as a result of this unprecedented ban. Pet. App. 23a ¶ 42. The Montana Supreme Court held that Petitioners had no protected property interests worthy of compensation.

1. Petitioners include the Seven Up Pete Venture ("Venture"), which held State Mineral Leases dating back to 1986. Pet. App. 4a ¶ 8. Petitioners also have private holdings, including real property (fee interests in the surface estate) and mineral ownership, in Montana. Id.

The lands encompassed by these leases and private holdings are known as the McDonald Project, the Keep Cool Project, and the Seven Up Pete Project. The McDonald Project alone contains some 9 million ounces of gold and 20 million ounces of silver discovered by the Venture. More than half these minerals could be recovered profitably through surface mining using cyanide heap leaching to separate precious metals from the ore. Pet. App. 4a-5a ¶ 8.

The Montana Supreme Court explained that "mining based upon cyanide heap leaching has always been legal in Montana, and, in fact, the country at large." Pet. App. 25a ¶ 44. The mineral leases entered into between the Venture and the State accordingly "contemplated" that the necessary environmental permits would be based on mining that used the cyanide heap leaching method. Id. The Venture "invested more than \$70 million and expected to reap millions in return" from those leases. Pet. App. 23a ¶ 42.

In 1994, as contemplated by the leases, the Venture sought environmental permits to construct and operate a surface mine using cyanide leaching. Pet. App. 6a ¶ 12. The Venture dealt with the Montana Department of Environmental Quality (DEQ) and its predecessor, and with the Department of Natural Resources and Conservation (DNRC). Pet. App. 6a-7a ¶¶ 12-13. The normal 60-day time limit for decision was extended and the permitting process was ongoing throughout the 1990s except for some months in 1998 when a stop-work order was issued. Pet. App. 7a ¶ 13. The Venture made all past-due payments in December 1998. Pet. App. 7a ¶ 15.

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2. In November 1998, the Montana electorate passed an unprecedented initiative ("I-137") prohibiting open-pit mining for gold and silver using cyanide leaching. Pet. App. 3a-4a ¶ 7. I-137, subsequently codified as Mont. Code Ann. § 82-4-390, took effect immediately but exempted mines already operating under existing permits. Pet. App. 3a-4a ¶ 7 (quoting statute). The Venture's State Mineral Leases were then in effect but a permit had not yet been issued. Accordingly, I-137 applied to the Venture and other Petitioners. Pet. App. 7a ¶ 14.

When I-137 took effect, fifteen months still remained on the Venture's State Mineral Leases. I-137, however, precluded the historically-permissible type of mining contemplated by the leases. Accordingly, in February 2000, the State DNRC notified the Venture that the leases had terminated. It explained, among other things, that the Venture had failed to submit a revised proposal comporting with I-137 as then codified in Montana statutory law. Pet. App. 7a-8a ¶¶ 13-15.

3. In April 2000, two months after being notified that the leases had been terminated, Petitioners brought suit. The complaint alleged that Petitioners had invested more than \$70 million to acquire and develop the properties and secure permits for the three mining projects. Complaint at 5 ¶ 24. It added that I-137 specifically targeted the McDonald Project in seeking to outlaw a type of mining that had been lawful and productive in Montana since the turn of the century. *Id.* at 6, 12 ¶¶ 29, 68. The Complaint added that "[t]here are no gold or silver recovery processes other than open-pit mining and cyanide leaching which will allow economically viable production of the gold and silver contained within the lands comprising" the three projects. *Id.* at 14 ¶¶ 83-84. Accordingly, Petitioners alleged that their once-valuable holdings had been reduced to "only nominal value" as a result of the enforcement of I-137. *Id.* at 15 ¶¶ 86-87.